

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CASEY T.,

Defendant and Appellant.

In re CASEY T.,

on Habeas Corpus.

A138649, A142829

(Alameda County
Super. Ct. No. C169011)

ORDER MODIFYING OPINION

(NO CHANGE IN JUDGMENT)

THE COURT:

Appellant’s motion for modification of case caption, opinion, and online docket, filed on April 5, 2019, is granted.

It is ordered that the opinion filed March 12, 2019, be modified as follows¹:

1. On page 1, in the caption and in the first sentence, appellant's full name is replaced with “Casey T.”

¹ Appellant’s motion does not request any modification to the habeas matter, filed in case number A142829, but this Court includes that case in this order on its own motion.

2. All other references to appellant's last name in the opinion filed herein are replaced with "appellant".

The Clerk of this Court is directed to replace appellant's last name in the case caption and online docket with the initial "T."

All documents filed bearing appellant's last name are deemed confidential.

The modification effects no change in the judgment.

Dated: _____

STREETER, Acting P.J.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CASEY T.,

Defendant and Appellant.

In re CASEY T.,

on Habeas Corpus.

A138649, A142829

(Alameda County
Super. Ct. No. 169011)

I. INTRODUCTION

When Casey T. was 15 years old, he fired a gun at a group of teenagers, killing one teen and grazing two others. He was tried as an adult and convicted of one count of second degree murder and two counts of attempted murder, along with firearm enhancements. In 2011, the trial court sentenced him to an aggregate state prison sentence of 84 years and 7 months to life, which included consecutive terms for multiple firearm enhancements (Pen. Code,² § 12022.53, subd. (a)).

This case is before us for the fourth time. In our original opinion, filed April 6, 2016, we affirmed the judgment, except that we modified appellant's sentence to reflect that he would be entitled to a parole hearing after serving 25 years in prison. We granted

² All further undesignated statutory references are to the Penal Code.

appellant's petition for rehearing, and in a subsequent opinion filed December 13, 2016, we affirmed the judgment but remanded the matter for the limited purpose of creating a record for use at a future youth-offender parole hearing in accordance with *People v. Franklin* (2016) 63 Cal.4th 261. We granted appellant's second petition for rehearing, raising a claim under then-recently enacted Proposition 57, which eliminated the authority of prosecutors to bypass the juvenile court and directly file charges against minors accused of certain offenses in adult courts of criminal jurisdiction. (See, e.g. *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 303 (*Lara*)). In our opinion filed June 27, 2017, we concluded that Proposition 57 did not apply to appellant's case.

The California Supreme Court granted appellant's petition for review regarding the retroactivity of Proposition 57. The grant of review was later expanded to address the retroactivity of other recently enacted sentencing legislation, to wit: Senate Bill No. 1391 (Stats. 2018, ch. 1012) and Senate Bill No. 620 (Stats. 2017, ch. 682). The California Supreme Court subsequently transferred the matter to this court with directions to vacate our June 27, 2017 decision and to reconsider the cause in light of Senate Bill No. 1391 and Senate Bill No. 620. Upon such reconsideration, we deem appellant's convictions to be juvenile adjudications and remand the matter to the juvenile court for further proceedings.

II. DISCUSSION

At the time appellant was charged and tried, California law permitted a district attorney, for certain offenses, to file a case against a juvenile 14 years of age or older directly in adult court. (Former Welf. & Inst. Code, § 707, subd. (d), repealed by Prop. 57, § 4.2, as approved by voters Gen. Elect. (Nov. 8, 2016), eff. Nov. 9, 2016; *People v. Vela* (2018) 21 Cal.App.5th 1099, 1105 (*Vela*)). Proposition 57 amended this statute to eliminate direct filing by prosecutors and require the juvenile court to conduct a transfer hearing to determine a minor's suitability for juvenile court. (*Lara, supra*, 4 Cal.5th at pp. 305–306; former Welf. & Inst. Code, § 707.) After our June 27, 2017 decision, the Supreme Court held in *Lara* that this provision applied retroactively to minors whose judgments were not yet final on appeal. (*Lara*, at pp. 303–304, 309–314.)

Senate Bill No. 1391, effective January 1, 2019, further amended Welfare and Institutions Code section 707 to eliminate the prosecutor’s authority to bring a transfer motion in a case involving a minor who was 14 or 15 years old at the time of the offense, unless the minor was not apprehended before the end of juvenile court jurisdiction. (§ 707, subd. (a), as amended (Sen. Bill No. 1391 (2017–2018 Reg. Sess.) § 1).) Appellant argues that Senate Bill No. 1391 is an ameliorative change to the criminal law, which reduces the punishment for crimes and that it therefore applies retroactively to minors whose judgments are not final on appeal.³ (See *Lara, supra*, 4 Cal.5th at pp. 303–304, 309–314 [because Proposition 57 reduced possible punishment for juveniles, it applied retroactively]; *In re Estrada* (1965) 63 Cal.2d 740.) We agree that appellant is entitled to the benefit of Senate Bill No. 1391 and that this case must proceed under juvenile court law. The matter must therefore be remanded to the juvenile court for appropriate proceedings.

The proper scope of those proceedings is found in *Vela*. The defendant there argued that because the amendments of Proposition 57 eliminating direct filing applied retroactively, his convictions should be reversed. The court disagreed, stating, “The jury’s convictions, as well as its true findings as to the sentencing enhancements, will remain in place. Nothing is to be gained by having a ‘dispositional hearing,’ or effectively a second trial, in the juvenile court. [Defendant] has already had a jury trial with all the rights afforded to him in that proceeding; 12 jurors found him guilty beyond a reasonable doubt.” (*Vela, supra*, 21 Cal.App.5th at p. 1112.) The court therefore ordered that if the juvenile court retained jurisdiction of the defendant on remand, it should treat his convictions as juvenile adjudications and impose an appropriate disposition. (*Id.* at p. 1113.) Our high court has endorsed this approach (*Lara, supra*, 4 Cal.5th at pp. 309–310, 313), and subsequent cases have followed it. (See, e.g., *People v. Garcia* (2018) 30 Cal.App.5th 316, 330; *People v. Phung* (2018) 25 Cal.App.5th 741, 761–763

³ The Attorney General has elected not to file a supplemental brief.

(*Phung*.) We shall likewise order the juvenile court to treat appellant's convictions and enhancements as juvenile adjudications and impose an appropriate disposition.

Senate Bill No. 620, effective January 1, 2018, amended sections 12022.5 and 12022.53 to give trial courts discretion to strike or dismiss these enhancements in the interests of justice. Appellant argues that these provisions apply retroactively to cases not yet final on appeal. We agree. (See *Vela, supra*, 21 Cal.App.5th pp. 1113–1114; *People v. Woods* (2018) 19 Cal.App.5th 1080, 1090–1091.) On remand, the juvenile court shall exercise its discretion pursuant to Senate Bill No. 620 in deciding whether to strike the firearm enhancements. (*Phung, supra*, 25 Cal.App.5th at p. 763.)

III. DISPOSITION

This court's June 27, 2017 decision is vacated. The judgment is reversed. The matter is remanded to the juvenile court, which shall deem appellant's criminal convictions and enhancements to be juvenile adjudications as of the date of the verdict. The juvenile court shall exercise its discretion pursuant to Senate Bill No. 620 in deciding whether to strike the firearm enhancements. The juvenile court shall then impose an appropriate disposition within its usual timeframe. The petition for writ of habeas corpus is denied as moot.

BROWN, J.

WE CONCUR:

STREETER, ACTING P. J.

TUCHER, J.